

ALTS asks the Commission to clarify that non-recurring charges should be equal to or less than the lowest non-recurring charge for the most analogous ILEC service and that these charges are capped by any ILEC non-recurring charge for an analogous service.⁴⁷

Because of its potential devastating effect on competition, the issue of non-recurring charges raised by ALTS and AT&T deserves the Commission's clarification. The Commission should adopt AT&T's proposed TELRIC-based approach to determining non-recurring charges. WorldCom also agrees with AT&T's method for establishing default proxies for non-recurring charges, although the Commission may wish to supplement that approach with ALTS' method using analogous services.

VI. RESALE ISSUES

- A. The Commission correctly interpreted section 252(d)(3) of the 1996 Act to exclude costs that are reasonably avoidable by ILECs when making their retail service available to resellers at wholesale rates

Time Warner Communications Holdings, Inc. ("Time Warner") and the National Cable Television Association, Inc. ("NCTA") argue that the Commission erred by interpreting section 252(d)(3) of the 1996 Act to mean that the wholesale rates by which ILECs will offer their retail services for resale shall be determined by excluding from retail rates all costs that are reasonably avoidable by offering the services at wholesale, rather than adhering to the statutory mandate to exclude only

⁴⁷ ALTS Petition at 4-5

those costs that will be avoided. In the view of Time Warner and NCTA, only the costs that an ILEC actually avoids should be excluded from the wholesale rate.⁴⁸ This argument, while it may hold some superficial appeal for some, is entirely without foundation.

First, it is plainly apparent from the statute that Congress intended for the resale of services to be an avenue of competition to ILECs. If Congress had not so intended, it would not have included sections 251(c)(4) and 252(d)(3) in the 1996 Act. Opening the local exchange to competitive entry is the entire purpose underlying sections 251(c) and 252, and their subsections. Yet if the Time Warner and NCTA interpretation of section 252(d)(3) were to be employed, this purpose would be thoroughly undercut. Basing the costs to be excluded from the retail rate on the costs that the ILEC chooses actually to avoid places the determination of whether there will be resale competition squarely in the hands of the monopoly ILEC. If an ILEC did not wish to face resale competition -- and the record indicates that the ILECs do not -- the ILEC would simply choose to continue its current expenditures and, thus, not avoid any cost. The resulting wholesale rate for such an ILEC would be identical to its retail rate and potential resale competitors would be deterred from entering the market. This cannot be the

⁴⁸ Petition for Reconsideration of Time Warner Communications Holdings, Inc. ("Time Warner Petition") at 3-6; Petition for Reconsideration, The National Cable Television Association, Inc. ("NCTA Petition") at 14-20.

result that Congress intended in enacting section 252(d)(3). The Commission's "reasonably avoidable" test eliminates this possibility for ILEC gamesmanship and appropriately captures the Congressional intent.

Second, strict adherence to the Time Warner/NCTA interpretation would require that state commissions engage in retroactive ratemaking since it is only after wholesale services have been provided that it could be determined what costs were actually avoided. The uncertainty that this would create would itself restrain new resale entrants. In order for a regulatory body to create prospective rates, a determination of must be made of those costs that "will be avoided." The Commission's "reasonably avoidable" standard is just such a determination.

WorldCom urges the Commission to reject the Time Warner and NCTA request for reconsideration of the Commission's interpretation of section 252(d)(3).

- B. The Commission should reconsider its decision to allow ILECs to restrict the resale of short-term promotions, should continue to permit unrestricted resale of customer specific contracts, and should clarify that discriminatory resale terms and conditions are prohibited

AT&T and MCI ask that the Commission reconsider its decision to exclude "short term" promotional rates from an ILECs' obligation to make all of its retail services available at wholesale rates.⁴⁹ As AT&T and MCI point out, the language of the 1996 Act is unambiguous: ILECs must "offer for resale at

⁴⁹ AT&T Petition at 29-31; MCI Petition at 8-12.

wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."⁵⁰ The wholesale rate is to be determined on the "basis of retail rates charged to subscribers for the telecommunications service offered."⁵¹ Taken together the statutory language is plain: ILECs must offer any of their retail telecommunications services at a wholesale rate based on the retail rate paid by subscribers. There is no exclusion, nor any room for an exclusion, in the statutory language for short term promotions. In keeping with the statute, the Commission should require short term promotions to be made available for resale at a wholesale rate based on the retail promotional rate. If the Commission decides not to reconsider this portion of its order, it should, at a minimum, adopt the safeguards proposed by MCI⁵² to ameliorate the potential anticompetitive effects of the Commission's decision.

Conversely, the LECC requests that the Commission reconsider its decision not to exclude customer-specific contracts from the resale obligation.⁵³ For the reasons expressed above, the Commission was correct in determining that there is no statutory basis for such an exclusion. The LECC request should be denied.

⁵⁰ 1996 Act, §251(c)(4) (emphasis added).

⁵¹ 1996 Act, §251(d)(3) (emphasis added).

⁵² See MCI Petition at 9-12.

⁵³ LECC Petition at 2.

With respect to ILEC restrictions on resale, WorldCom supports MFS' request that the Commission clarify its order to make it clear that any geographic or premises restriction on resale is prohibited. As MFS suggests, the "Commission should declare that any tariff condition or limitation that has a disparate or disproportionate effect on resellers as compared to end users (even if it does not single out resellers) should be presumed unreasonable."⁵⁴

C. The Commission should reconsider the grandfathering of withdrawn services

MFS raises the concern that the Commission's decision to permit the grandfathering of withdrawn services will permit ILECs to restrict improperly certain types of resale competition.⁵⁵ As noted above, section 251(c)(4) of the 1996 Act requires ILECs to make all of their retail services available for resale. Further, section 251(c)(4)(B) prohibits all unreasonable or discriminatory conditions or limitations on resale. The Commission's grandfathering policy for withdrawn services may in fact limit potential competitors' ability to resell such services. Under that policy, a competitor may not resell the withdrawn service to anyone outside of the pool of grandfathered customers. Although that may be suitable for competitors or services where customers are competed for one at a time, it would not be suitable for services that require an

⁵⁴ MFS Petition at 22.

⁵⁵ MFS Petition at 22-25.

amount of volume aggregation to make them efficient. The Commission should adopt MFS' recommendation that the Commission prohibit ILECs from "'grandfathering' a retail telecommunications service, unless they provide the service to resellers without unreasonable conditions or limitations for the same length of time that the service remains available to grandfathered end users."⁵⁶

VII. CONCLUSION

WorldCom urges the Commission to act in accordance with the comments expressed above. The First Report and Order represents a tremendous step forward in the task of establishing competition in the local telecommunications marketplace. Adopting the fine-tuning endorsed in these comments will help the Commission advance that cause even further. In addition, as noted above, the Commission should reject requests to reconsider or clarify the First Report and Order in ways that undercut the pro-competitive goals of the Commission and of the Congress.

Respectively submitted,



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⁵⁶ MFS Petition at 25.

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 31th day of October, 1996, sent a copy of the foregoing "Comments of WorldCom, Inc. on Petitions for Reconsideration and/or Clarification" by hand delivery, or first class mail, postage prepaid, to the following:

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